Chan Eng Leong & Anor v Goh Choon Kim & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS P-02(IM)(NCVC)-548–03 OF 2021 AND P-02(IM)(NCVC)-558–03 OF 2021
ABDUL KARIM, ABU BAKAR JAIS AND AHMAD ZAIDI IBRAHIM JJCA
18 MAY 2022

Civil Procedure — Contempt of court — Committal proceedings — Breach of injunction order — Respondents applied to set aside leave for committal proceedings — Whether notices to show cause must be personally served pursuant to O 52 r 2B of Rules of Court 2012 — Whether appellants had proven sustainable case for contempt against all proposed contemnors for prima facie case at leave stage

These appeals arose from two decisions of the High Court ('HC') which were emanated from one ad interim injunction order ('injunction order'). The two decisions of the HC were in respect of encl 59 and 70. Enclosure 59 was an application by the appellants for an order of committal for contempt of court for disobeying that injunction order after leave was given. The order for committal was sought for the imprisonment and/or fine against the first, second, fourth, fifth, sixth and seventh respondents ('proposed contemnors'). Enclosure 70 was an application by the proposed contemnors to set aside that leave obtained for the application for an order of committal. The HC allowed encl 70 and struck out encl 59. The learned judicial commissioner ('JC') in deciding so, had explained that when the leave was heard ex parte, there was sufficient evidence for him to find a prima facie case for the leave to be granted. However, when all parties were before the court, the learned JC was satisfied that leave should not have been given basically on two grounds. With regard to the two grounds, in respect of encl 70, for the application to set aside the leave given for an order of committal, the HC allowed this application because: (a) the appellants failed to personally serve the notice to show cause to the proposed contemnors and to prove the service by way of an affidavit pursuant to the provisions of the Rules of Court 2012 ('the ROC'). The notice could not be served by AR registered and email; and (b) the appellants failed to prove a sustainable case for contempt against all proposed contemnors. Hence, these appeals. The issues for consideration were: (i) whether the notices to show cause must be personally served pursuant to O 52 r 2B of the ROC; and (ii) whether the appellants had proven a sustainable case for contempt against all proposed contemnors for a prima facie case at the leave stage.

(1) The need for notice to show cause and for the same to be served personally on a proposed contemnor, were procedural safeguards accorded to such person. The procedural safeguards must be complied by the party intending to start a contempt proceeding. Nonetheless, the importance of complying with procedure in contempt proceedings had been slightly diluted with the advent of the case of *Tan Poh Lee v Tan Boon Thien* [2022] 3 MLJ 177. The appellants need not show and produce the show cause before applying for leave of the committal. The three notices to show cause issued by the appellants to the proposed contemnors were not actually required. Thus, as a fortiori, there should not be any issue whether the same had been personally served on the proposed contemnors. Since the same was not mandatory, it should follow that it did not matter whether the notices were served personally on the proposed contemnors or not (see paras 58–59, 62 & 68).

(2) The purport of the three letters said to show acts of contempt had in fact, clearly breached the terms of the injunction order. It would mean the first, second, fourth and fifth respondents should at least on a prima facie case all be implicated in respect of the leave given for committal that was initially granted by the court to the appellants because of the breach of the injunction order. There was nothing in the injunction order to indicate that the whole terms of para 2 of the same could only be enforced by the third defendant. The terms of the same were wide enough for the appellants to even bind the third respondent. The third respondent should not only be the party to enforce para 2 of the injunction order. Consequently to bar the appellants in enforcing the same was misconceived (see paras 70, 81 & 83).

(3) The sixth respondent was no longer in the employment of the third defendant and hence she must not in any manner give any instruction to the seventh respondent in respect to the containers arriving at the port for the third respondent. There was at least a prima facie case against her for the leave for committal that was rightly given by the court then. The seventh respondent was a third party who merely acted on the instruction of the sixth respondent without knowing the dispute between the appellants and the first and second respondents in gaining control of the third respondent. It would be wrong to implicate the seventh respondent of any acts of contempt in this case. The sixth respondent had no authority in respect of the handling of the containers arriving at the port. She indeed had interfered with the management and affairs of the third respondent. In respect of the actions of the first and second respondents, said in breach of para 2 of the injunction order, there was no contempt since the first and second respondents had acceded to their solicitors' advice not to halt the appellants from entering the third respondent's premises (see paras 85–87, 91 & 93–94).

(4) Both appeals were allowed except against the seventh respondent. Since both appeals had been allowed, whether imprisonment or just fine or both should be imposed on the contemnors except the seventh respondent, should be decided by the High Court. Therefore encl 59 was ordered to be remitted to the High Court for the determination of the prayers (see paras 96–97).

[Bahasa Malaysia summary

Rayuan ini timbul daripada dua keputusan Mahkamah Tinggi ('MT') yang terhasil daripada satu perintah injunksi ad interim ('perintah injunksi'). Kedua-dua keputusan MT adalah berkenaan dengan lampiran 59 dan 70. Lampiran 59 adalah permohonan oleh perayu-perayu untuk mendapatkan perintah komital kerana menghina mahkamah kerana mengingkari perintah injunksi selepas kebenaran diberikan. Perintah komital telah dipohon untuk penjara dan/atau denda terhadap responden pertama, kedua, keempat, kelima, keenam dan ketujuh ('penghina yang dicadangkan'). Lampiran 70 adalah permohonan oleh penghina yang dicadangkan untuk mengetepikan kebenaran yang diperolehi untuk permohonan perintah komital. MT membenarkan lampiran 70 dan membatalkan lampiran 59. Pesuruhjaya kehakiman yang bijaksana ('PK') dalam memutuskan demikian, telah menjelaskan bahawa apabila kebenaran itu didengar secara ex parte, terdapat bukti yang mencukupi untuk beliau menemui kes prima facie untuk kebenaran itu diberikan. Bagaimanapun, apabila semua pihak dihadapkan ke mahkamah, PK yang bijaksana berpuas hati bahawa kebenaran tidak sepatutnya diberikan pada asasnya atas dua alasan. Berkenaan dengan dua alasan, berkenaan dengan lampiran 70, bagi permohonan untuk mengetepikan kebenaran yang diberikan untuk perintah komital, MT membenarkan permohonan ini kerana: (a) perayu-perayu gagal menyampaikan sendiri notis tunjuk sebab kepada penghina yang dicadangkan dan membuktikan penyampaian itu melalui afidavit menurut peruntukan Kaedah-Kaedah Mahkamah 2012 ('KKM'). Notis itu tidak dapat disampaikan oleh AR berdaftar dan emel; dan (b) perayu-perayu gagal membuktikan kes penghinaan yang nyata terhadap semua penghina yang dicadangkan. Oleh itu, rayuan ini. Isu-isu untuk pertimbangan adalah: (i) sama ada notis tunjuk sebab mesti disampaikan secara peribadi menurut A 52 k 2B KKM; dan (ii) sama ada perayu-perayu telah membuktikan kes nyata untuk penghinaan terhadap semua penghina yang dicadangkan untuk kes prima facie pada peringkat kebenaran.

(1) Keperluan untuk notis tunjuk sebab dan untuk perkara yang sama disampaikan secara peribadi kepada penghina yang dicadangkan, adalah perlindungan prosedur yang diberikan kepada orang tersebut. Perlindungan prosedur mesti dipatuhi oleh pihak yang berhasrat untuk memulakan prosiding penghinaan. Walau bagaimanapun, kepentingan untuk mematuhi prosedur dalam prosiding penghinaan telah sedikit

dilemahkan dengan kedatangan kes *Tan Poh Lee v Tan Boon Thien* [2022] 3 MLJ 177. Perayu tidak perlu menunjukkan dan mengemukakan tunjuk sebab sebelum memohon kebenaran komital. Tiga notis tunjuk sebab yang dikeluarkan oleh perayu kepada penghina yang dicadangkan sebenarnya tidak diperlukan. Maka, dengan itu, tidak sepatutnya timbul sebarang isu sama ada perkara yang sama telah disampaikan secara peribadi kepada penghina yang dicadangkan. Memandangkan perkara yang sama tidak diwajibkan, ia harus diikuti bahawa tidak penting sama ada notis disampaikan secara peribadi kepada pihak yang dicadangkan atau tidak (lihat perenggan 58–59, 62 & 68).

(2) Maksud ketiga-tiga surat yang dikatakan menunjukkan perbuatan menghina sebenarnya, jelas melanggar terma perintah injunksi. Ini bermakna responden pertama, kedua, keempat dan kelima sekurang-kurangnya dalam kes prima facie semua terlibat berkenaan dengan kebenaran yang diberikan untuk komital yang pada mulanya diberikan oleh mahkamah kepada perayu kerana pelanggaran perintah injunksi. Tiada apa-apa dalam perintah injunksi yang menunjukkan bahawa keseluruhan terma perenggan 2 yang sama hanya boleh dikuatkuasakan oleh defendan ketiga. Syarat-syarat yang sama adalah cukup luas untuk perayu-perayu malah mengikat responden ketiga. Responden ketiga bukan sahaja menjadi pihak yang menguatkuasakan perenggan 2 perintah injunksi. Akibatnya untuk menghalang perayu menguatkuasakan perkara yang sama telah disalah anggap (lihat perenggan 70, 81 & 83).

(3) Responden keenam tidak lagi dalam pekerjaan defendan ketiga dan oleh itu dia tidak boleh dalam apa-apa cara memberi apa-apa arahan kepada responden ketujuh berkenaan dengan kontena yang tiba di pelabuhan untuk responden ketiga. Sekurang-kurangnya terdapat kes prima facie terhadapnya untuk kebenaran komital yang telah diberikan oleh mahkamah ketika itu. Responden ketujuh adalah pihak ketiga yang hanya bertindak atas arahan responden keenam tanpa mengetahui pertikaian antara perayu dengan responden pertama dan kedua dalam mendapatkan kawalan responden ketiga. Adalah salah untuk mengaitkan responden ketujuh dengan sebarang tindakan penghinaan dalam kes ini. Responden keenam tidak mempunyai kuasa berhubung dengan pengendalian kontena yang tiba di pelabuhan. Dia memang telah campur tangan dalam pengurusan dan hal ehwal responden ketiga. Berkenaan dengan tindakan responden pertama dan kedua, yang dikatakan melanggar perenggan 2 perintah injunksi, tiada penghinaan kerana responden pertama dan kedua telah mematuhi nasihat peguamcara mereka untuk tidak menghalang perayu daripada memasuki premis responden ketiga (lihat perenggan 85–87, 91 & 93–94).

(4) Kedua-dua rayuan dibenarkan kecuali terhadap responden ketujuh.

Memandangkan kedua-dua rayuan telah dibenarkan, sama ada hukuman penjara atau denda atau kedua-duanya patut dikenakan ke atas penghina kecuali responden ketujuh, hendaklah diputuskan oleh Mahkamah Tinggi. Oleh itu lampiran 59 telah diperintahkan untuk dihantar ke Mahkamah Tinggi untuk penentuan permohonan (lihat perenggan 96–97).]

Cases referred to

Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor [2021] 2 MLJ 652; [2020] 7 CLJ 173, FC (distd)

Tan Boon Thien & Anor v Tan Poh Lee & Ors [2021] 3 MLJ 61; [2020] 3 CLJ 28, CA (refd)

Tan Poh Lee v Tan Boon Thien [2022] 3 MLJ 177; [2020] 2 CLJ 719, FC (folld)

Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458, FC (refd)

Legislation referred to

Companies Act 2016 s 347

Rules of Court 2012 O 52, O 52 rr 2B , 3, 4, 4(3)

Appeal from: Civil Suit No PA-22NCVC-801 of 2020 (High Court, Pulau Pinang)

Karin Lim Ai Ching (with Suppiah a/l Arumugam, Nicholas Lim Wei Jian and Maegen Seah Ee Hoong) (Presgrave & Matthews) for the appellant.

Chow Siew Mai (Chooi, Saw & Lim); Thayalan s/o Muniandy (with Chong Jun Min and Lim Khai Sin) (JA Yeoh) for the respondents.

Abu Bakar Jais JCA:

INTRODUCTION

[1] There are two appeals before us arising from two decisions of the High Court ('HC'). The two decisions of the HC resulting in the two appeals, emanate from one ad interim injunction order ('injunction order').

[2] The two decisions of the HC are in respect of encls 59 and 70. Enclosure 59 is an application for an order of committal for contempt of court for disobeying that injunction order after leave is given. The order for committal was sought for the imprisonment and/or fine against the first, second, fourth, fifth, sixth and seventh respondents. Enclosure 70 is an application to set aside that leave obtained for the application for an order of committal.

[3] Enclosure 59 is applied by the appellants. Enclosure 70 is applied by first, second, fourth, fifth, sixth and seventh respondents (collectively 'proposed contemnors'). A

[4] The HC struck out encl 59 and allowed encl 70, hence, the present appeals. B

BACKGROUND FACTS

[5] The appellants are directors and shareholders of the third respondent, which is the company. The first and second respondents are also shareholders of the said company. The appellants filed a suit on 7 January 2020 against the first to third respondents based on a breach of the terms of a share sale agreement dated 7 August 2019 entered into between the appellants and the second respondent and a shareholders' agreement dated 7 August 2019 entered into between all the shareholders of the third respondent. It was basically a shareholders' dispute. The third respondent was added only as a nominal defendant in the suit. C D

Terms of the injunction order E

[6] Pursuant to this suit, a notice of application for an interlocutory injunction was filed by the appellants simultaneously with the writ and statement of claim and the HC granted the injunction order on 14 January 2020. The terms of the said injunction order are as follows: F

> 1. An injunction to restrain the first and second defendants whether by themselves, their agents, employees or servants or any of them or otherwise howsoever in any manner whatsoever:
>
> a. *from injunction to restrain the first and second defendants whether by themselves, their agents, employees or servants or any of them or otherwise howsoever in any manner whatsoever:* G
>
> (i) *removing the first and second Plaintiffs as directors of the third defendant* and/or in any manner interfering with their position and rights as directors of the third defendant;
>
> (ii) *appointing the first defendant and Goh Kim Heong or any other person as directors of the third defendant*, in substitution of or in addition the first and second Plaintiffs as directors of the third defendant. H
>
> b. *From taking any action* — in relation to or concerning the first and second Plaintiffs as directors of the third defendant *which would pre-empt the proper disposal of this Action* by this Honourable Court. I
>
> 2. *An Order that the defendants whether by themselves personally, or through their agents, employees or servants or otherwise,* be restrained from trespassing, resorting to illegal actions; from interfering with peaceful occupation; *interfering with the*

A *management and affairs of the Third defendant [Global Tobacco Manufacturers (International) Sdn Bhd] or its staff*, pending the disposal of Notis Permohonan (encl 3) by this Honourable Court.

3. *Personal service of this Order on to the defendants is dispensed with*. (Emphasis added.)

B

Personal service dispensed with

[7] As the said injunction order provided that personal service of the same on the first and second respondents is dispensed with, it was served on their C then solicitors (Messrs Goik, Ramesh & Loo). The said injunction order contained a penal clause which stated as follows:

If you, the First defendant, GOH CHOON KIM (NRIC No: 610901–07–5201) and you, ONG AH POH (NRIC No: 620317–07–5148) disobey this order, you D will be liable to process of execution for the purpose of compelling you to obey the same.

Alleged acts of contempt by the first and second respondents

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[8] The appellants then asserted that there were acts of contempt in respect of the terms of that injunction order, first, by the first and second respondents. The appellants said both first and second respondents had acted in collusion/concert and had refused access to the appellants into the third F respondent ie company's premises. This, the appellants contended constitutes a breach of para 2 of the said injunction order, as shown above. The appellants referred to the incident on the night of 14 January 2020, which was on the very same night after the said injunction order had been granted by the court. The first respondent acting in collusion/concert with the second respondent had G gone to the premises of the third respondent together with his agents and/or servants and deliberately and intentionally refused to allow the appellants, being the directors/the persons having management of the affairs of the third respondent, to enter into the premises of the said company.

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[9] The allegation was made by the appellants that during his presence at the premises of the said company, the first respondent had acted aggressively and intimidated and assaulted the staff of the said company who were there.

I

[10] The appellants said that only after their solicitors had contacted the solicitors for the first and second respondents at the material time to inform them about the first respondent's refusal to allow the appellants access to the premises of the said company and highlighting to them that such conduct constituted a clear breach of the said injunction order and contempt of court,

did the first and second respondents or their agents/servants allow the appellants access to the premises of the said company.

[11] It is also alleged there was a further act of contempt of the injunction order when the first respondent had, by way of his letter dated 12 March 2020 addressed to the appellants in relation to the share sale agreement dated 7 August 2019 entered into between him and the appellants, demanded the resignation of the second appellant as a director of the said company and threatened to initiate action against the first and second appellants for alleged cheating and unlawful misconduct. This, according to the appellants, constitutes breach of paras 1(a)(i) and (ii) and (b) of the said injunction order. In his letter, the first respondent had demanded as follows:

> *I hearby demand* that you return to me all documents including the transfer of shares, the share certificates and *the resignation of Chong Bee Choo as director within seven (7) days from the date hereof* without prejudice to my right to take such necessary action against you and/or your servant or agents for cheating and for all unlawful misconduct. (Emphasis added.)

[12] The appellants contended by demanding the resignation of the second appellant as a director of the said company, the first respondent has acted in clear breach of the said injunction order by which he has been restrained 'from taking any action in relation to or concerning the plaintiffs as directors of the said company, which would pre-empt the proper disposal of the above action by the court'.

[13] It is argued that the first respondent has no right whatsoever to demand the resignation of any of the appellants as directors of the said company. His action in demanding for the second appellant to resign as a director of the third respondent amounts to a violation of the said injunction order which forbids him from doing what he has done and thereby amounts to contempt of court. The appellants contended the first respondent's action is intended to destroy the sub-stratum of the inter partes hearing of the appellants' application (encl 3) and the sub-stratum of the suit and to interfere with the due administration of justice and the course of justice.

[14] The appellants said by threatening to take action against the appellants in the event they do not comply with his demand for resignation of the second appellant as a director of the said company, the first respondent had exerted unlawful pressure on the appellants and this is something which he had been enjoined from doing.

Alleged acts of contempt by the fourth respondent

[15] The appellants also contended there were acts of contempt by the fourth respondent. It is said he has unlawfully terminated the share sale agreement dated 24 April 2019 entered into between him and Natural Transforms Sdn Bhd (a company owned by the appellants in acquiring shares in the third respondent) thereby attempting to force the appellants to be removed as directors of the third respondent. This, according to the appellants constitutes breach of paras 1(a)(i) and (ii) and 1(b) of the said injunction order.

[16] Further, it is alleged the fourth respondent had also colluded and acted in concert with the first and second respondents, being his uncle and aunt as their agent and/or servant or knowingly assisting them to undermine the terms of the said injunction order by threatening to take action against the appellants in relation to their position as directors of the third respondent. This constitutes breach of paras 1(a)(i) and (ii) and 1(b) of the said injunction order.

[17] The appellants also contended the fourth respondent has acted in collusion/concert with the first and second respondents as their agent and/or servant or knowingly assisted them in threatening to take action against the appellants in relation to and in connection with the appellants' positions as directors of the third respondent, although it is clearly prohibited by the said injunction order of which he has knowledge.

[18] It is said the fourth respondent had sent a letter dated 11 March 2020 to Natural Transforms Sdn Bhd ('National Transforms') in which the appellants are the shareholders and directors. By way of the said letter, he alleged that due to non-payment of the balance purchase price due under a share sale agreement dated 24 April 2019 entered into between him and Natural Transform, the said agreement is terminated by this letter. Based on the said allegation, he had demanded as follows:

> I hereby demand that you return to me all documents including the transfer of shares, the share certificate and the resignation of Chan Eng Leong as director within seven (7) days from the date thereof without prejudice to my right to take such necessary action against you and/or your servants or agents including Chan Eng Leong for cheating and for all unlawful misconduct.

[19] The appellants contended the share sale agreement dated 24 April 2019 between the fourth respondent and Natural Transforms had been duly executed by both parties with each party being represented by its respective solicitors and the said share sale agreement has been duly completed with Natural Transforms having paid the full purchase price for the sale and the fourth respondent having resigned as a director upon having transferred his shares in the said company to Natural Transforms.

[20] A police report dated 22 February 2019 had been lodged by the fourth respondent wherein he has stated, inter alia, that the first appellant as a director of Natural Transforms had threatened him with a gun and forced him to sign the share sale agreement with him. He did not suggest or state in the said report that the balance purchase price has not been paid to him, whereas now by way of the said letter dated 11 February 2020, in a complete change of stance, he had given the impression that the said share sale agreement with him is valid and that Natural Transforms has not paid the balance purchase price.

[21] The appellants said the contents of the fourth respondent's letter dated 11 March 2020 show that he is acting in bad faith and with an ulterior motive to cheat the appellants of all the monies which had been paid under the said share sale agreement to him and that he is colluding and acting in concert with his uncle and aunt (the first and second respondents) to undermine the terms embodied in the said injunction order obtained by the appellants, despite being fully aware of the same.

[22] Further, the appellants alleged it is clear that by attempting to terminate the said share sale agreement and by demanding the resignation of the first appellant as a director of the said company, the fourth respondent has the intention to unseat the appellants as directors of the third respondent and to be replaced by himself and by his uncle, the first respondent. The appellants contended this action on his part is a continuation of the notice of EGM issued by the first and second respondents prior to the date of the said injunction order. The demand for the first appellant to resign as a director of the said company and the threat of action against the appellants for alleged cheating and for unlawful misconduct constitutes breach of the said injunction order.

[23] The appellants argued the timing of the said letter dated 11 March 2020 and the demand contained therein and the threat to take action against the appellants show clearly that it is an afterthought on the part of the fourth respondent and his intention to create baseless, false and unsustainable issues in order to assist the first and second respondents as their agent/or servant and/or to collude/act in concert with them to buttress their defence against the said injunction order and the suit and to interfere with the due administration of justice and undermine the said injunction order.

Alleged acts of contempt by the fifth respondent

[24] The appellants further contended that the first and second respondents had colluded and acted in concert with the fifth respondent (a shareholder of the third respondent and the brother of the first respondent) by threatening the appellants that a derivative action will be commenced against them based on the allegation that the appellants have violated the law by failing to pay in full

for the sale of shares in the third respondent by the fourth respondent to Natural Transforms and the sale of shares by the first and second respondents to the appellants. This constitutes breach of paras 1 and 2 of the said injunction order.

[25] The appellants contended they have colluded and acted in concert by threatening the appellants that a derivative action will be commenced against them based on the allegation that they have violated the law by commencing the above action and obtaining the said injunction order to restrain them from convening any meeting for the removal of the appellants as directors of the third respondent and for the appointment of the first respondent and the fourth respondent as directors of the third respondent.

[26] By way of a letter dated 18 March 2020, the first and second respondents and the fifth respondent gave notice to the appellants that all three of them intend to apply for leave of court under s 347 of the Companies Act 2016 to initiate proceedings in the name of the third respondent against the appellants as directors of the third respondent based on their allegations that:

(a) the appellants have violated the law, inter alia, in not paying in full or at all for the sale of shares in the third respondent by the fourth respondent to Natural Transforms and the sale of shares by the first and second respondents to the appellants; and

(b) in commencing proceedings under the suit against the first and second respondents on 14 January 2020 to restrain them, amongst others, from convening any meeting for the appellants' removal as directors of the third respondent and for the appointment of the first respondent and the fourth respondent as directors of the third respondent and interfering with the management and affairs of the said company.

[27] The said notice dated 18 March 2020 states, inter alia, as follows:

> (iv) in failing to call for a meeting requisitioned by Ong Ah Poh and Goh Choon Kim as members of the company on 16.12.2019 for the removal of Chan Eng Leong and Chong Bee Choo as directors and for the appointment of Goh Choon Kim and Goh Kim Heong as directors of the company within fourteen (14) days from the date of the requisition and to hold the meeting on a date not more than twenty-eight (28) days after the date of the notice as prescribed under the Companies Act 2016.
>
> (vii) in commencing proceeding in the matter under Penang High Court Civil Suit No. PA-22NCVC–8–01/2020 against Goh Choon Kim, Ong ah Poh and the company and obtaining an Ad Interim Order of injunction on 14 January 2020 restraining Goh Choon Kim and Ong Ah Poh from, amongst other things, convening any meeting for the removal of Chan Eng Leong and Chong Bee Choo as directors and for the appointment of Goh Choon Kim and Goh Kim Heong as

directors of the company and interfering with the management and affairs of the company, without cause and having no knowledge of the affairs of the company.

[28] The appellants said the fifth respondent, has colluded and/or acted in concert with the first and second respondents to undermine and defeat the said injunction order, despite having full knowledge of the said injunction order, by virtue of the specific reference made to the said injunction order in the said notice dated 18 March 2020. Their threat of intended commencement of a derivative action while the said injunction order is valid and binding, is aimed at undermining and defeating the intent and purpose of the said injunction order.

[29] According to the appellants, the allegation made by the first and second defendants and by the fifth respondent that the appellants have taken the actions complained of by them in the notice without cause and having no knowledge of the affairs of the third respondent is without basis and is denied. Further, their complaints constitute a shareholders' issue which was before the court for determination under the suit and should not form the subject matter of a derivative action.

[30] The ex parte leave for an order to commit the proposed contemnors for contempt of court was granted after the learned JC had heard oral submissions and had perused the written submissions together with the Bundle of Authorities.

Alleged acts of contempt by the sixth and seventh respondents

[31] The appellants said that the sixth respondent has unlawfully interfered with the affairs of the said company by giving instructions to the seventh respondent when the sixth respondent was not an employee of the third respondent and had no authority whatsoever to do so. According to the appellants, this constitutes breach of para 2 of the said injunction order.

[32] The appellants contended the seventh respondent has unlawfully interfered with the affairs relating to the third respondent by refusing to adhere to instructions from the appellants in relation to containers held up at the port by the Customs Department for clearance/inspection. This constitutes breach of para 2 of the said injunction order.

[33] This is because, on 31 January 2020, a container belonging to the third respondent was shipped by KT & G Corporation from the Republic of Korea to Penang Port. Upon the arrival of the said shipment, the appellants' personnel were informed by one En Roslan, a forwarding agent, that a lady known as Ms

Carmen had instructed clearance of the said container. In addition, he had also received an unsigned letter on the third respondent's letterhead.

[34] The appellants maintained that they being the directors in control of the management and affairs of the third respondent, had never authorised any person by the name of Ms Carmen nor had they appointed any forwarding or shipping agent under the name of the seventh respondent to clear the said container. Upon further investigation, the appellants discovered that the contact number of the said Ms Carmen is the same as the contact number of the daughter of the first and second respondents named Goh Kooi Cheng, ie the sixth respondent.

[35] The appellants said it is clear from the facts stated above that the so-called Ms Carmen, who had instructed for the clearance of the said container, is in fact the daughter of the first and second respondents. This shows that the sixth respondent had acted in collusion and/or concert with and/or on the directions of the parents or knowingly assisted her parents in interfering with the affairs of the third respondent said company. Further, the seventh respondent had on its own admission, acted on the direction of the sixth respondent that is, the person who had held herself out as Ms Carmen.

[36] A letter dated 18 March 2020 had been issued by the Royal Malaysian Customs Department to the third respondent as well as to the seventh respondent, which was purportedly the forwarding/shipping agent of the third respondent, for the inspection of four containers.

[37] The appellants said they had never authorised the sixth respondent and/or seventh respondent to clear the said containers. They have no knowledge of the contents of the said containers. The sixth and seventh respondents are in no way authorised to deal with matters relating to the third respondent in any manner whatsoever without the appellants' express consent.

[38] The appellants contended that the sixth respondent was no longer an employee of the third respondent at the material time when she gave instructions in respect of the said containers. She also had no authority whatsoever to sign any document for or on behalf of the third respondent.

[39] Thus, the sixth respondent has unlawfully signed and used the third respondent company's stamp without the consent/approval of the same. Further, she had even on 18 March 2020, that is, at a time when she was no longer an employee of the said company, authorised the seventh respondent to deal with the said containers.

Notice to show cause issued to the proposed contemnors

[40] The appellant said prior to the filing of the said application for leave to apply for an order of committal, the appellants' solicitors had pursuant to O 52 r 2B of the Rules of Court 2012 ('the RC'), issued a notice to show cause dated 26 March 2020 to the first and second defendants and to the fifth respondent as to why contempt proceedings should not be commenced against them, particularising the contemptuous acts committed by them. According to the appellants, the said notice was sufficiently served on them via AR registered post and email.

[41] In addition to the above modes of service, the said notice to show cause was also served by the process server (of the appellant's solicitors) named Ahmad Razali bin Mat Sab on 28 May 2020.

[42] The appellants contended that the said notices issued to the first and second respondents and to the fifth respondent had been duly received by them and this is evidenced by the fact that there was a reply from their newly appointed solicitors, Messrs JA Yeoh. In their letter dated 31 March 2020, Messrs JA Yeoh had stated, inter alia, as follows:

> As it is clear that the said order of Injunction dated 14 January 2020 is in itself an abuse of the process and a contempt of court, we shall be filing the necessary application to strike out the abovementioned action and to have the said order of Injunction discharged without prejudice to our clients' rights to cite your clients and all those involved in the said order of Injunction for contempt of Court, once the Movement Control Order ends.

[43] The appellants' solicitors also issued a notice to show cause dated 26 March 2020 to the fourth respondent. The appellants contended the said notice particularising the contemptuous acts committed by him had been sufficiently served on him via AR registered post and email. In addition to the above modes of service, the said notice to show cause had also been served by the process server named Ahmad Razali bin Mat Sab.

[44] The appellants argued, in their reply dated 31 March 2020, Messrs JA Yeoh had stated that they act for the first, second, fourth and fifth respondents. As such, the notice to show cause had been sufficiently served on all four.

[45] The appellants' solicitors also issued another notice to show cause dated 26 March 2020 to the sixth respondent and to the seventh respondent particularising the contemptuous acts committed by them. The appellants argued the said notice had been sufficiently served on them via AR registered post and email. In addition to the above modes of service, the said notice had also been served on them by the process server named Ahmad Razali bin Mat Sab.

[46] By way of a reply dated 31 March 2020, Messrs JA Yeoh had stated that they act for the sixth respondent and the seventh respondent. As such, the appellants contended there had been sufficient service of the said notice on the sixth and seventh respondent. In addition to the above modes of service, the said notice to show cause had also been served by the process server Ahmad Razali bin Mat Sab.

[47] In view of the above, the appellants argued the conditions for obtaining leave to apply for an order of committal had been satisfied in that the appellants had obtained a lawful order of court dated 14 January 2020 and the said order had not been discharged or varied at that juncture. The ex parte order for leave was obtained on 5 June 2020. The first and second respondents had also been warned by way of the penal notice contained in the said injunction order about the coercive sanction of the court if they disobey the said order. As such, the proposed contemnors had the knowledge and were aware of the terms of the said injunction order.

[48] The proposed contemnors were represented by the same solicitor, Messrs JA Yeoh and they issued two letters, both dated 31 March 2020 in response to the three show cause notices:

(a) the first letter responded to the first show cause letter on behalf of the first and second respondents and the fifth respondent and the second show cause letter on behalf of the fourth respondent; and

(b) the second letter responded to the third show cause letter on behalf of the sixth respondent and seventh respondent.

[49] In both letters, Messrs JA Yeoh referred to the show cause notices dated 26 March 2020 and responded to say that the proposed contemnors took the stand that:

> ... we are to inform you that our clients have not breached the said order of injunction dated 14 January 2020 ... consequently, the notice to show cause as set out in your letters dated 26 March 2020 is misconceived and without basis.

AT THE HC

[50] At the HC, encls 59 and 70 were heard together. The HC found merits for encl 70. Thus, encl 59 could not be allowed. Consequently, the HC allowed encl 70. Since encl 70 was allowed, the HC struck out encl 59.

[51] The learned judicial commissioner ('JC') in deciding so, has explained that when the leave was heard ex parte, there was sufficient evidence for him to

find a prima facie case for the leave to be granted. However, when all parties were before the court, the learned JC was satisfied that leave should not have been given basically on two grounds.

[52] With regard to the two grounds, in respect of encl 70, for the application to set aside the leave given for an order of committal, the HC allowed this application because:

(a) the appellants failed to personally serve the notice to show cause to the proposed contemnors and to prove the service by way of an affidavit pursuant to the provisions of the RC. The notice could not be served by AR registered and email; and

(b) the appellants failed to prove a sustainable case for contempt against all proposed contemnors.

ISSUES

[53] Based on the background facts as narrated and the grounds of the learned JC, the broad issues that can be discerned are as follows:

(a) whether the notices to show cause must be personally served pursuant to O 52 r 2B of the RC; and

(b) whether the appellants had proven a sustainable case for contempt against all proposed contemnors for a prima facie case at the leave stage.

OUR DECISION

Whether the notices to show cause must be personally served pursuant to O 52 r 2B of the RC

[54] First, parties in this appeal do not dispute that in their present case, as opposed to contempt in the face of the record, there is a need for a show cause before the appellants could initiate a contempt proceeding. They must have appreciated there is a provision in the RC requiring such notice to show cause. This is provided by O 52 r 2B of the RC that states:

> In all other cases of contempt of court, a formal notice to show cause why he should not be committed to the prison or fined shall be served personally.

[55] Second, in the above provision, it is clearly stated that the notice to show cause must be served personally. This issue of whether the notices were served personally became central to the decision of the HC. However, according to the appellants, it is permitted not to serve it personally, despite the seemingly unambiguous stipulation of the provision. They relied on the Federal Court case of *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] 2

MLJ 652; [2020] 7 CLJ 173, where it is said:

> On the requirement of notice pursuant to O 52 r 2B which has not been complied with, on the facts of this case, we agree that the non-compliance is not fatal or prejudicial to the respondents.

[56] It is very important to note that this is the only statement made in respect of O 52 r 2B of the RC by the Federal Court ('FC') in that case. There is no other statement in respect of the compliance or non-compliance of that specific provision. According to the learned JC deciding the case at the HC, that statement at the FC is not the ratio decidendi of the case as that statement is bare and without any elaboration.

[57] It is also incumbent to note, as seen, that statement is somehow qualified by the words '... on the facts of this case ... '. This would suggest the decision of the FC above is confined to that particular case alone. The statement of the FC that the non-compliance of the provision is not fatal and prejudicial, should not therefore, be extended to other cases, which obviously would have different facts applying in the same, as in the present case before us. That statement is applicable only for the above case, *Mkini Dotcom* alone. In any event, the effect of this case of the FC will not weigh heavily in our decision because of the more elaborate explanation by the FC in another case on O 52 r 2B of the RC which will be explained shortly.

[58] The need for such notice to show cause and for the same to be served personally on a proposed contemnor, are procedural safeguards accorded to such person. The procedural safeguards must be complied by the party intending to start a contempt proceeding. This is because an action for contempt is a serious matter and criminal in nature that might affect the liberty of a person. A celebrated case on this point is the FC case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458. This case states:

> [29] *It is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance.* In this regard, Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 had this to say:
>
> > Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations. For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.

> *It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done. For example, if the notice has not been personally served the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference.* In the same way, as is shown by *Taylor v Roe*, if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of motion, that is a fatal defect, even though the defendant gets to know everything before the motion comes on, and indeed answers the affidavits. (Emphasis added.)

[59] Nonetheless, the importance of complying with procedure in contempt proceedings has been slightly diluted with the advent of the FC case of *Tan Poh Lee v Tan Boon Thien* [2022] 3 MLJ 177; [2020] 2 CLJ 719. At least in this case, the procedural safeguard for a notice to show cause under O 52 r 2B of the RC is no longer required. As shown earlier, this is the very provision under scrutiny in our present case.

[60] A further elaboration on this apex court case would be appropriate. The FC in this case had overruled the Court of Appeal's decision that required such notice to show cause before any application for leave for contempt is made (see *Tan Boon Thien & Anor v Tan Poh Lee & Ors* [2021] 3 MLJ 61; [2020] 3 CLJ 28 for the court of Appeal case).

[61] First, the FC found that the show cause should not be given by the parties but by the court. This is said as follows:

> [9] *the notice referred to in* O 52 r 2B *is to be issued at the behest of the court, and not the parties. Private parties do not issue notices to show cause to each other. It is what the court does.* It is after all, the order of court which has been breached. And it is therefore the court that ensures compliance and redresses any contravention. And that is therefore what O 52 r 2B is concerned with — ensuring. (Emphasis added.)

[62] The above is significant because it indicates the appellants, being a party in this case need not show and produce the show cause before applying for leave of the committal.

[63] The FC went further to explain that show cause issued pursuant to O 52 r 2B of the RC actually refers to the documents, particularly the application itself referred in O 52 r 4(3) which states:

> Subject to para (4), the notice, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 3 and the order granting such leave, must be served personally on the person sought to be committed.

[64] In this regard the FC said:

A [10] It then follows that such a notice can only come into being after the initiation of contempt proceedings by making the requisite application to court. And that is why the notice in O 52 r 2B ties in with the documents referred to in O 52 r 4(3).

B [11] In this context, we respectfully concur with the decision of Lim Chong Fong J in *Tang Hak Ju v Pengarah Tanah dan Galian Pulau Pinang & Ors* [2016] MLJU 695; [2017] 2 CLJ 345 that the notice to show cause referred to in O 52 r 2B refers to the documents stated in O 52 r 4(3), particularly the notice of application itself.

[65] The FC also explained why such notice to show should not be a requirement as follows:

C [12] If O 52 r 2B is construed otherwise, it would require a litigant seeking to enforce a court order (which ought to be complied with expeditiously, if not forthwith) to send a pre-notice as a mandatory requirement, before being able to even initiate committal proceedings, notwithstanding that both the litigant and the

D alleged contemnor are fully aware of the order of court.

[13] Any such commencement of contempt proceedings in turn, would require further compliance with O 52 r 4(3), which means that the documents specified there would have to be served personally a second time. And that too for an order of court, to which the alleged contemnor was fully privy, or ought to have notice of.

E

[14] The time expended would be far too long. There would, moreover, be surplusage in the need for a pre-notice followed by further personal service in relation to the documents under O 52 r 4(3). After all, it is the failure to comply with the order of court that is the primary subject matter of consideration.

F [15] We concur with the appellant's submissions that while contempt proceedings may well entail criminal consequences, and that great care must be taken in contempt proceedings, bearing in mind the possible consequences to the liberty of a person, such consideration must be balanced against the equally important requirement that court orders must be complied with strictly.

G [16] Moreover, the Rules of Court 2012 ensures that the potential contemnor is fully safeguarded. This takes the form of O 52 rr 3 and 4. As such, there is no basis on which to construe O 52 r 2B as imposing a further mandatory requirement for a pre-notice prior to even initiating contempt proceedings against a contemnor who has been party to, and therefore is fully conversant with an order of court made

H against him or involving him. Such a construction would defeat the need for prompt and full compliance with orders of court which carry the force of the law.

[17] We therefore conclude that the Court of Appeal erred in focusing solely on the word 'shall' without adequately considering the rationale and purpose of the entirety of O 52.

I

[66] The FC concluded by answering the following two questions of law:

(a) whether on a true construction of O 52 r 2B of the Rules of Court 2012, prior notice to show cause is to be given to a proposed contemnor before

the filing of an ex parte leave application under O 52 r 3 of the Rules of Court 2012; and

(b) whether on a true construction of O 52 r 2B of the Rules of Court 2012, the notice to show cause referred to in O 52 r 2B, means the documents referred to in O 52 r 4(3) of the Rules of Court 2012.

[67] The first question is answered in the negative, while the other in the affirmative.

[68] As we are bound by the above decision and in following the same, we must therefore say the three notices to show cause issued by the appellants to the proposed contemnors in our case, are in the first place, not actually required. Thus, as a fortiori, there should not be any issue whether the same had been personally served on the proposed contemnors. Since the same is not mandatory, it should follow that it does not matter whether the notices were served personally on the proposed contemnors or not.

[69] Following the above case too, it does not matter that in our present case, Messrs JA Yeoh had acted for the proposed contemnors in responding to the show cause letters. On the contrary, it only proves that the proposed contemnors knew of the case against them since Messrs JA Yeoh responded to the show cause letters on their behalf. In any event, as explained, this is no longer relevant in view of the FC's decision above.

[70] Hence, on this issue whether the notices to show cause must be served personally pursuant to O 52 r 2B of the RC, we are of the view that this must be answered in the negative, having regard to what is explained by the FC above. This issue should favour the appellants as the FC had pointed out such notices were actually not required.

Whether the appellants had proven a sustainable case for contempt against all proposed contemnors for a prima facie case at the leave stage

[71] First, before answering this issue, it is appropriate to reiterate the three letters said to show acts of contempt. In this regard it is also relevant to note the learned JC's grounds of judgment, as follows:

First respondent's letter dated 12 March 2020 to the appellants

[72] By a letter dated 12 March 2020, the first respondent:

(a) terminated the share sale agreement between him and the appellants;

(b) demanded for the return of the appellants' resignation letters; and

(c) reserved their right to sue for cheating and unlawful misconduct.

[73] This gave rise to the contention against the first respondent who demanded for the second appellant's resignation and threatened to sue the appellants for cheating and unlawful misconduct. The appellants argued this is in breach of para 1 of the injunction order.

Fourth respondent's letter dated 11 March 2020 to Natural Transforms

[74] By a letter dated 11 March 2020, the fourth respondent:

(a) terminated the share sale agreement dated 24 April 2019 between himself and Natural Transforms;

(b) demanded for the return of the appellants' resignation letters; and

(c) reserved their right to sue for cheating and unlawful misconduct.

[75] This gave rise to two contentions against the fourth respondent:

(a) that his termination of the share sale agreement dated 24 April 2019 between himself and Natural Transform is an unlawful attempt to remove the appellants as directors of D3; and

(b) his threat to sue the applicants qua directors of Natural Transform for cheating and unlawful misconduct.

Both instances were in breach of para 1 of the injunction order according to the plaintiff.

First respondent, second respondent and fifth respondent letter dated 18 March 2020 to the appellants

[76] By a letter dated 18 March 2020, the first respondent, second respondent and fifth respondent, qua shareholders of third respondents, put the appellants on notice of their intention to commence derivative action in the name of the third respondent against the appellants for violating the law in:

(a) failing to make any or full payment for the purchase of the shares pursuant to the share sale agreement between the first respondent, second respondent and the appellants;

(b) failing to make any or full payment for the purchase of the shares pursuant to the share sale agreement between fourth respondent and Natural Transforms; and

(c) commencing the instant proceedings against first respondent and second respondent.

[77] This gave rise to the three charges against the first respondent, second respondent and the fifth respondent as follows:

(a) their threat to sue the appellants via a derivative action in the name of third respondent for:

(i) failing to make any or full payment for the purchase of the shares pursuant to the share sale agreement between first respondent and second respondent and the appellants; and

(ii) failing to make any or full payment for the purchase of the shares pursuant to the share sale agreement between fourth respondent and Natural Transforms;

(b) their threat to sue the applicants via a derivative action in the name of the third respondent for commencing the instant proceedings against first respondent and second respondent; and

(c) their undermining of the injunction order, were all in breach of para 1 of the injunction order.

[78] In respect of all these three letters and the effect of the same, the learned JC decided that when these letters were written, the dispute was still dynamic and parties were entitled to take legal positions. Therefore, the learned JC did not agree with the appellants that these letters meant that the terms of the injunction order had been breached.

[79] In this regard, we take notice that all these letters were written after the injunction order was issued on 14 January 2020. Therefore, these letters must not contravene the terms of the injunction order. The same has the effect, among others that the positions of both the appellants as directors of the third respondent should not be undermined. The purport of these letters had in fact, clearly breached para 1a(i), (ii) and b of the terms of the injunction order (please see these terms as shown earlier).

[80] We therefore, with respect, could not agree with the learned JC that these letters were sent at an early stage, where the dispute was still dynamic, thus allowing parties to take legal positions. We are of the opinion that whatever legal positions the parties prefer to take, must not be inconsistent with the terms of the injunction order, especially when all three letters were written only after the injunction order was issued by the court. Thus, in respect of these letters, the appellants had rightly raised a prima facie case warranting the leave to be given.

Contempt of first, second, fourth and fifth respondent in respect of the letters

[81] Thus, looking at all these letters, it would mean the first, second, fourth

A and fifth respondents should at least on a prima facie case all be implicated in respect of the leave given for committal that was initially granted by the court to the appellants because of the breach of the injunction order. The leave for committal was indeed correctly given and with respect to the learned JC, we disagree that the appellants had failed to prove a sustainable case for contempt against all of them for at least a prima facie case at the leave stage.

B

Alleged contempt of para 2 of the injunction order

C **[82]** Apart from these letters, there were other alleged acts of contempt. In this regard, with respect to the alleged contempt of para 2 of the terms of the injunction order on trespassing and interfering with the peaceful occupation of the business premise of the third respondent, the learned JC decided that the breach of the same if any could only be enforced by the third respondent. This also relates to the alleged act of contempt by the freight forwarder, the seventh respondent. Similarly, the learned JC also decided that only the third respondent could initiate further contempt action on the seventh respondent and not the appellants.

D

E **[83]** With respect to the learned JC, first, we note that the injunction order was applied and obtained by appellants. Hence the terms of the injunction order were for the benefit of the appellants. The appellants can therefore enforce the terms of the injunction order. Further, there is nothing in the injunction order to indicate that the whole terms of para 2 of the same could only be enforced by the third defendant. Second, the terms of the same were wide enough for the appellants to even bind the third respondent (please see the terms of the injunction order, especially para 2 of the same). Third, the third respondent was indeed made an opposing party, although a nominal one by the appellants in the suit that resulted in the injunction order. Thus, the third respondent should not only be the party to enforce para 2 as found by the learned JC. Consequently to bar the appellants in enforcing the same is with respect misconceived.

F

G

[84] Therefore, with respect, the learned JC erred in concluding only the third respondent could enforce para 2 of the terms of the injunction order on trespassing and interfering with the peaceful occupation of the business premise of the third respondent. Similarly, the learned JC also erred in this regard to find that only the third respondent could initiate further contempt action on the freight forwarder, the seventh respondent and not the appellants.

H

I

Contempt of sixth respondent

[85] The sixth respondent, the daughter of the first and second respondents, at the material time had no authority whatsoever to act for the third

respondent. She was no longer in the employment of the third defendant. She should not at all be involved with respect to the containers arriving at the port for the third respondent. Hence, she must not in any manner give any instruction to the seventh respondent in respect of the same.

[86] We are of the considered view that there was at least a prima facie case against her for the leave for committal that was rightly given by the court then.

No contempt by the seventh respondent

[87] Nonetheless, perhaps at this juncture, it is most opportune to note the alleged act of contempt by the freight forwarder, the seventh respondent. The seventh respondent is a third party who merely acted on the instruction of the sixth respondent without knowing the dispute between the appellants and the first and second respondents in gaining control of the third respondent. And the seventh respondent should not be expected to know this. The seventh respondent was merely doing honest work in delivering the goods to the third respondent at least on ostensible authority.

[88] As indicated, when the goods arrived at the port, the appellants' personnel were informed by one En Roslan, a forwarding agent, that a lady known as Ms Carmen (who later turn out to be the sixth respondent) had instructed clearance of the said container. In addition, En Roslan had also received an unsigned letter on the third respondent's letterhead. En Roslan could not be expected to defy the instruction of Ms Carmen. After all, he had a letter on the third respondent's letterhead although unsigned. As a forwarding agent, he needs to act fast in delivering the goods. He cannot be expected to enquire on the unsigned letter under that circumstance. He also cannot be expected to be too concerned with the dispute of others.

[89] The appellants said, they being the directors in control of the management and affairs of the third respondent, had never authorised any person by the name of Ms Carmen (sixth respondent) nor had they appointed any forwarding or shipping agent under the name of the seventh respondent to clear the said container. The seventh respondent cannot be expected to know this. They were already engaged by the third respondent under the instruction of Ms Carmen. They merely wanted to complete the work assigned to them.

[90] In fact, a letter dated 18 March 2020 had been issued by the Royal Malaysian Customs Department to the third respondent as well as to the seventh respondent, for the inspection of the four containers at the port.

[91] Based on all the reasons we have stated above, it would be wrong to implicate the seventh respondent of any acts of contempt in this case. The facts

as narrated, showed the seventh respondent acted in good faith and cannot therefore, shoulder any blame whatsoever in respect of the leave for committal already given and also for the application of committal for contempt as per encl 59 filed by the appellants.

Finding by learned JC in respect of the containers

[92] The learned JC also decided that in respect of the handling of the containers by the sixth and seventh respondents, both had not breached para 2 of the injunction order. This essentially is because the terms '... be restrained from trespassing, resorting to illegal actions; from interfering with peaceful occupation; interfering with the management and affairs of the Third defendant [Global Tobacco Manufacturers (International) Sdn Bhd] or its staff ...' was not infringed by the sixth and seventh respondent.

[93] With respect to the learned JC, we do not agree on his finding as indicated. This is because the actions of the sixth respondent at least would tantamount to breaching the terms ' ... interfering with the management and affairs of the Third defendant [Global Tobacco Manufacturers (International) Sdn Bhd] or its staff ...' as indicated above. This is because she simply was no longer in the employment of the third respondent and hence had no authority to act for the same. She indeed had interfered with the management and affairs of the third respondent in respect of the containers arriving at the port.

No contempt by the first and second respondent on the alleged incident of preventing the appellants to enter the third respondent's premises

[94] In respect of the actions of the first respondent and second respondent, said in breach of para 2 of the injunction order, they had gone to the premises of the third respondent together with agents and/or servants and deliberately and intentionally refused to allow the appellants, being the directors/the persons having the management of the affairs of the third respondent, to enter into the premises of the said company. However, they relented after their solicitors were notified by the appellants' solicitors that they were in breach of para 2 of the injunction order in restraining and preventing the appellants from doing so. The first and second respondents were accordingly informed by their solicitors not to restrain the appellants from entering the third respondent's premises and they immediately obliged. In this regard, the learned JC was not wrong to find that there was no contempt since the first and second respondents had acceded to their solicitors' advice not to halt the appellants from entering the third respondent's premises. There is no valid reason for us to disagree with the finding of the learned JC in this respect.

[95] In view of the explanation above, we find basis for the appellants to initiate and maintain the contempt proceedings against the following respondents:

(a) first respondent for the letter dated 12 March 2020 and 18 March 2020;

(b) second respondent for the letter dated 18 March 2020;

(c) fourth respondent for the letter dated 11 March 2020;

(d) fifth respondent for the letter dated 18 March 2020; and

(e) sixth respondent for the handling of the containers.

OUR ORDER

[96] Based on all the explanations, we are unanimous in allowing both appeals with costs for the appellants, except against the seventh respondent. Based on the reasons we have given, the seventh respondent should not be subjected to the contempt proceedings. Both appeals are therefore dismissed against the seventh respondent only, with costs against the appellants.

[97] There is also a need to make a further order in respect of encl 59. As recalled, this is the appellants' application for an order of committal. We consider we ought to make this further order because once the learned JC allowed encl 70, the HC had no choice but to strike out encl 59. In that sense, the prayers of encl 59 were not really heard at the HC. More so when we consider the said prayers include prayer 1 in encl 59 for committal to prison and/or fine against the contemnors. Whether it is imprisonment or just fine or both, has not been decided. More so when there is no argument pertaining to the same by both parties in the case before us. Since both appeals have been allowed, whether imprisonment or just fine or both should be imposed on the contemnors except the seventh respondent, should be decided by the HC. We hereby make an order that encl 59 be remitted to the HC for the determination of the prayers before another HC judge or JC, since the learned JC deciding this case has ceased to be a JC.

Order accordingly.

Reported by Ahmad Ismail Illman Mohd Razali